IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 4350 of 2007(P)

OS.212/2001 of I ADDL.SUB COURT,TRIVANDRUM
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PETITIONER:

J.S.JAYAN @ CHIKKU, S/O. V.JAYACHANDRAN,
AGED 37 YEARS, RESIDING AT 'UTHARAYAN',
TAGORE GARDENS, KUMARAPURAM, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.AJAKUMAR
SRI.T.M.CHANDRAN

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, COLLECTORATE,
VANCHIYOOR P.O., THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
COLLECTORATE, VANCHIYOOR P.O.,
THIRUVANANTHAPURAM.

3. THE TAHSILDAR,
TALUK OFFICE, FORT P.O., VANCHIYOOR,
THIRUVANANTHAPURAM.

4. THE VILLAGE OFFICER,
PATTOM VILLAGE, PATTOM PALACE P.O.,
THIRUVANANTHAPURAM.

5. THE ADDITIONAL SALES TAX OFFICER I,
IIND CIRCLE, OFFICE OF THE SALE TAX OFFICER,
PEROORKADA, THIRUVANANTHAPURAM.

6. MR. K.R.GOPALAN, S/O. LATE KUNJUKUTTY,
RESIDING AT T.C.12/1423, UNIVERSITY ROAD,
THIRUVANANTHAPURAM.

7. MR. ANTONY AYALLOOR,
T.C.30/1067, PETTAH, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. MATHEW VADAKKEL FOR R1 TO R5

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the plaint in OS 212/2001

Ext.P2 true copy of the FIR in Crime No.41/2001

Ext.P3 true copy of the petition for amendment.

Ext.P4 true copy of the objection filed by the respondents.

Ext.P5 true copy of the order in IA 2384/2006

Ext.P6 true copy of the review petition IA 5674/2006

Ext.P7 carbon copy of the order in IA 5674/2006

M.N.Krishnan, J.

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W.P(C).No.4350 of 2007

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Dated this the 1st day of December, 2007.

JUDGMENT

This Writ Petition is preferred to set aside Exts.P5 and P7 orders passed by the subordinate Judge, Thiruvananthapuram in O.S.No.212 of 2001. The writ petitioner herein has filed the suit against the Government, i.e., the Sales Tax Authorities from proceeding with the revenue recovery proceedings on the basis of three bonds alleged to be executed by him during different periods. The case of the plaintiff is that he has not executed any bonds at all and therefore, there cannot be enforcement of the bonds by revenue recovery proceedings and hence he prayed for an injunction from proceeding on the basis of the bonds. It is also submitted by the counsel for the writ petitioner that he moved an application as I.A.No.154 of 2002 for a direction to the Sales Tax Department to produce the bonds alleged to be executed by him and notice was given to the parties. But it is submitted that the documents were not produced and therefore it was closed with an observation that adverse inference will be drawn.

2. Thereafter, when the matter came up for evidence, the Sales Tax Department produced these bonds for enforcement.

Then the plaintiff has moved an application for amendment of the plaint contending and praying for a declaration regarding the validity of the bonds alleged to be executed by him. The court below had dismissed that application on the ground that it is highly belated and so it cannot be entertained and there is a specific bar for the court to entertain the same. An application was later filed to review the said order and that petition also met with the same fate and it is thereafter that this Writ Petition is filed requesting the court to allow the amendment application.

3. At the outset, I may like to mention that the merits or demerits of the case cannot be taken into consideration at the stage of amendment of the pleadings. Admittedly, final result of the suit will depend upon the question whether the plaintiff has executed the bonds as alleged by the defendants. The plaintiff originally instituted the suit and requested the defendants to produce the alleged bonds for the reason that he has reiterated that there has been no such execution. As stated by me earlier, decision on the whole case depends upon the validity or execution of the bonds as the case may be.

4. Questions of non-maintainability of the suit or non-maintainability of a declaratory relief under the provisions of the General Sales Tax Act are all matters which the court can consider when appropriate written statement is filed and issues are raised in that behalf. One need not have shut out the pleadings on the ground that it may not be entertainable. Therefore I am inclined to set aside the orders passed by the

court below and allow the amendment application and permit the defendants to file their additional written statement. Needless to say that the question of maintainability of the suit is a matter which the defendants can raise and it can be considered by the court in accordance with law. I make it clear that the observations made in the earlier order passed by the court shall not govern the field to decide such an issue when it is raised. I also make it clear that I have not gone into the details on the merits of the case.

Writ Petition is disposed of accordingly.

M.N.Krishnan,
Judge.

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